

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
KING CIGARETTE SERVICE, INC.
for a hearing
under Article 20 of the
Tax Law.

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AFFIDAVIT OF MAILING

State of New York
County of Albany

Catherine Steele, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 25th day of August, 1976, she served the within Notice of Decision by ~~(certified)~~ mail upon King Cigarette Service, Inc. ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

King Cigarette Service, Inc.
1700 Paterson Plank Road
North Bergen, New Jersey

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~ ~~the~~ petitioner herein and that the address set forth on said wrapper is the last known address of the ~~(representative of the)~~ petitioner.

Sworn to before me this
25th day of August, 1976.

Janet Mack

Catherine Steele

STATE OF NEW YORK
STATE TAX COMMISSION

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Catherine Steele, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 25th day of August, 1976, she served the within Notice of Decision by ~~certified~~ mail upon Julius Siegel, Esq.

(representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Julius Siegel, Esq.
299 Broadway
New York, New York 10007

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative of the) petitioner herein and that the address set forth on said wrapper is the last known address of the (representative of the) petitioner.

Sworn to before me this

25th day of August, 1976.

Janet Mack

Catherine Steele



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

August 25, 1976

TELEPHONE: (518) **457-3850**

King Cigarette Service, Inc.
1700 Paterson Plank Road
North Bergen, New Jersey

Gentlemen:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section(**X**) **478** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from the date of this notice.

Inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned. They
will be referred to the proper party for reply.

Very truly yours,

Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
KING CIGARETTE SERVICE, INC.	:	DECISION
for a hearing under Article 20 of the	:	
Tax Law.	:	

Petitioner, King Cigarette Service, Inc., 1700 Paterson Plank Road, North Bergen, New Jersey, applied for a hearing regarding the seizure, the taking possession and the forfeiture to New York State of sixteen packs of cigarettes and two cigarette vending machines and the redemption, pursuant to section 477(b) of the Tax Law, of said packs of cigarettes and cigarette vending machines.

A formal hearing was held before Edward Goodell, Hearing Officer, at the office of the State Tax Commission, Two World Trade Center, New York, New York, on March 16, 1976 at 2:45 P.M.

Petitioner, King Cigarette Service, Inc., appeared by Julius Siegel, Esq. The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq., (James A. Scott, Esq., of counsel.)

ISSUE

Whether the petitioner, King Cigarette Service, Inc., should be permitted to redeem the seized cigarettes and vending machines on the grounds that the failure to affix tax stamps to six

packs of cigarettes and the placing of New Jersey tax stamps instead of New York tax stamps on ten packs of cigarettes were the results of errors rather than of intent to avoid payment of the cigarette tax.

FINDINGS OF FACT

1. The name of the petitioner, as corrected by counsel for the petitioner, is King Cigarette Service Inc. The title of this proceeding, including the notice of hearing, has been accordingly amended.

2. King Cigarette Service, Inc., the petitioner herein, is engaged in the business of selling cigarettes through vending machines placed in locations in Staten Island, New York City.

3. King Cigarette Service, Inc., the petitioner herein, is a subsidiary of Silco Automatic Vending Company (Silco), which also engages in the sale of cigarettes through vending machines placed in locations in the State of New Jersey.

4. The petitioner, King Cigarette Service, Inc., sells approximately 500,000 packs of cigarettes per annum in Staten Island and Silco sells approximately 200,000 packs of cigarettes a week in the State of New Jersey.

5. The petitioner, King Cigarette Service, Inc., orders cigarettes directly from the manufacturers thereof who ship the same to the petitioner from their warehouses to a warehouse used

jointly by the petitioner and Silco, located at 1700 Paterson Plank Road, North Bergen, New Jersey.

6. The packing and stamping of cigarettes delivered as aforesaid to said warehouse located as aforesaid in North Bergen, New Jersey is performed in the said warehouse by both the petitioner and Silco.

7. One Pitney-Bowes machine is used for the stamping of cigarette packs for both petitioner and Silco with tax stamps issued respectively by New York and New Jersey, using, however, separate meter heads for said purpose, one meter head being used for New Jersey tax stamps and another meter head being used for New York tax stamps.

8. The cost of cigarette tax stamps issued by New Jersey was the same as the cost of cigarette tax stamps issued by New York at the time of the seizure of the cigarettes and vending machines referred to hereafter.

9. After the said Pitney-Bowes machine has stamped the cigarettes which it has processed, the cartons containing said cigarettes for sale in both New York and New Jersey are placed on shelves in one room and said warehouse until orders therefore are received.

10. Occasionally packs of cigarettes processed as aforesaid "come loose in a box" and "a stock clerk---has to sit down and put ten packs back in a carton."

11. "As a carton goes through the Pitney-Bowes machines there is what is called a plow "whose function" is to open the

"glue flap" but "sometimes it just slides under the plow and it will go straight through and stamp on the flap" with the result that "no packs of cigarettes would be stamped."

12. On December 5, 1975, the Senior Excise Tax Investigator of the Department of Taxation and Finance in the course of a routine examination of 30 of the petitioner's cigarette vending machines in Staten Island found a vending machine of the petitioner in the Roma Restaurant located on Hyland Boulevard, Staten Island containing approximately 400 packs of cigarettes, ten of which did not have the required tax stamps of New York but did bear the tax stamps of New Jersey.

13. On the same day, December 5, 1975, the said Senior Excise Tax Investigator in the course of said routine examination also examined two of the petitioner's cigarette vending machines in the Finast Supermarket, located on Hyland Boulevard in Staten Island, each containing approximately 400 packs of cigarettes or a total of approximately 800 packs of cigarettes. One of said cigarette vending machines contained six packs of cigarettes which did not bear any tax stamps.

14. The aforesaid sixteen packs of cigarettes and the said two cigarette vending machines containing the said 10 packs of cigarettes bearing the tax stamps of New Jersey and the said 6 packs of cigarettes bearing no tax stamps were seized on December 9, 1975 by the State Tax Commission and on December 30, 1975 a notice was addressed to the petitioner advising it

that the said sixteen packs of cigarettes and the said two vending machines had been declared forfeited.

CONCLUSIONS OF LAW

A. That the failure of the petitioner, King Cigarette Service, Inc., to affix tax stamps to six packs of cigarettes contained in a cigarette vending machine in the Finast Supermarket located on Hyland Boulevard, Staten Island, was the result of error and not the result of an intent to evade payment of the applicable New York cigarette tax.

B. That the fact that ten packs of cigarettes contained in a cigarette vending machine in the Roma Restaurant located on Hyland Boulevard, Staten Island, bore New Jersey tax stamps instead of the applicable New York tax stamps was the result of error and not the result of an intent by petitioner, King Cigarette Service, Inc., to evade payment of the applicable New York cigarette tax.

C. That the application of the petitioner, King Cigarette Service Inc., to redeem sixteen packs of cigarettes and two cigarette vending machines seized on December 9, 1975 and declared forfeited on December 30, 1975, be and the same is hereby granted upon condition, however, that within 10 days after the service of a copy of this decision upon counsel for the petitioner at his office, 299 Broadway, New York, New York,

by mail or otherwise, the petitioner may redeem the said sixteen packs of cigarettes and the said two cigarette vending machines by the payment of the tax due thereon together with a penalty of fifty per centum thereof and the costs incurred in the proceeding or the sum of five dollars, whichever shall be greater.

DATED: Albany, New York
August 25, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER